IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NUMBER_____

ALBERT E. WALLACE, JR.,

Petitioner,

vs.

ALBERT B. WALLACE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Albert E. Wallace, Jr. petitions this Court for a writ of certiorari to review the judgment and opinion of the Supreme Court of Georgia entered in the case of Albert E. Wallace, Jr., appellant, vs. Albert B. Wallace, appellee, on the 6th day of February, 1969.

OPINIONS BELOW

The opinion and judgment of the Supreme Court of Georgia have not yet been reported, but are appended hereto.

JURISDICTION

The judgment of the Supreme Court of Georgia was dated and entered on the 6th day of February, 1969. A motion for a rehearing was denied by the Supreme

Court of Georgia on February 20, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3) since a right, privilege and immunity is specially claimed under the Constitution of the United States.

QUESTION PRESENTED FOR REVIEW

The question presented is whether an attorney at law, duly admitted to practice law in the State courts for life, may be constitutionally, under the due process clause of the 14th Amendment, deprived of such status by an order of the Supreme Court of such state requiring attorneys to pay an annual license fee and register as a member of a "State Bar" where the record affirmatively shows that such attorney was never given notice of such order nor given an opportunity to be heard, and such attorney is thus held to be ineligible to take office of District Attorney to which he had been elected by the voters of his Circuit by virtue of a ruling by the Supreme Court of such State that he had not legally practiced law for three years as required by the State Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment Fourteen of the Constitution of the United States provides:

"nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

The petitioner, Albert E. Wallace, Jr., was admitted to practice law in Georgia during May, 1963, under the laws that existed in Georgia at that time. (R. 7.) Title 9-1 Ga. Code of 1933. His admission to practice was for life, unless sooner revoked by disbarment. On December

6, 1963, the Georgia Supreme Court, by order, created the State Bar of Georgia, and provided that the temporary officers of such association "shall cause to be mailed to each member of the Bar of this State" a copy of the Order, registration form and statement for a license fee, on or before January 1, 1964. (219 Ga. 876.) The Order of the Georgia Supreme Court further provided that persons otherwise authorized to practice law who shall fail, on or before February 29, 1964 "to return the registration form and pay the license fee of $15.00 shall be suspended from the practice of law." (R. 93.) Petitioner was not given notice of this Order of the Supreme Court, and did not register or pay his license fee as provided by the Order, but continued to practice Law. (R. 40 & 57.) After having so practiced law for more than 5 years, (R. 44,) without registering or paying the license fee, until June, 1968, petitioner qualified as a candidate in the Democratic Primary for the office of Solicitor General (District Attorney) for the Clayton Judicial Circuit. He became the nominee of the party, and his name was placed upon the ballot in the General Election of November 5, 1968. (R. 5.) He was elected to such office, having defeated two other opponents, (one of whom is the Respondent). Prior to petitioner's assuming the office, Respondent filed a contest to the election, contending that petitioner was ineligible because he had not lawfully practiced law for at least three years prior to such election as required by the Georgia Constitution. Petitioner defended the contest with a number of defenses, among them that he did not receive notice of the order of the Supreme Court of Georgia requiring him to register and pay a license fee. (R. 18.) In spite of the order of the Georgia Supreme Court requiring notice to be mailed to each

member of the Bar prior to January 1, 1964, four of the Justices of the Supreme Court held petitioner to have illegally practiced law during 1964 through 1967 rendering him ineligible to hold the office to which he had been elected by the majority of the voters of such circuit. Two Justices dissented, and the Chief Justice was absent because of illness. On motion for rehearing it was pointed out to that Court that the majority opinion had deprived petitioner of due process of law in violation of the 14th Amendment in not requiring notice of the order to be served upon petitioner prior to his suspension. Four of the Justices denied the motion for rehearing, and three of the Justices dissented. Certiorari is now being sought in this Court to review such judgment.

MANNER OF RAISING FEDERAL QUESTION

Petitioner testified under oath in the contest proceeding that he did not register or pay the license fee in 1964 because he was never notified or sent a bill. (R. 40 & 57.) Mrs. Grant Williams, Secretary of the State Bar of Georgia, also testified that petitioner was not notified. (R. 51 & 53.) The Fourth defense filed by petitioner to the election contest recites that he never received any notice advising him that such license fee was due and payable. (R. 18.) The motion for rehearing contends that petitioner was denied due process of law under the 14th Amendment by the Georgia Supreme Court in not giving him notice as provided by the Order of that Court. (R. 88 to 99.)

SUMMARY OF REASONS FOR ALLOWANCE OF WRIT

1.

The question involved is of gravity and importance to all members of the Bar in Georgia and every other State in order to ascertain if their status as practicing members of the legal profession can be altered by the courts of the State without actual notice to them or an opportunity to be heard.

2.

The question involved is of gravity and importance in that all members of the legal profession who have been admitted to practice in the State courts for life have a property right to carry on such profession which cannot be taken from them without affording them due process of law in the form of notice and an opportunity to be heard.

3.

The voters of a judicial circuit of a State have been deprived of their vote by having a majority of the electors ballots cancelled by a ruling of the courts holding their choice to be ineligible.

4.

The right to the emoluments and office for four years to which the petitioner was duly elected by the voters of the circuit should not be withheld where there is an affirmative undisputed showing in the record that the petitioner had no knowledge that he was required to register and pay dues to continue the practice of law.

ARGUMENT OF REASONS FOR ALLOWANCE OF WRIT

A person admitted to practice law in the courts of a State have a property right to maintain that status until such time as it is forfeited for some reason. The petitioner was admitted to practice law in 1963 for life. Either a change in the law or an order of a State court could not change his status without first informing him and giving him an opportunity to comply. The right to practice law has been recognized as a "property right" that can only be taken after due process of law. In re Ruffalo, 390 U.S. 544 (1968)

"Due process" forbids the exercise of judicial power substantially affecting a defendants rights without notice. Griffin v. Griffin, 327 U.S. 220. More properly so, laws or orders of courts which require registration or assessments, and provide penalties for failure to comply, cannot be constitutionally enforced unless the person whose registration is sought has been properly furnished with notice. The majority of the Georgia Supreme Court recognized that petitioner, who was admitted to practice the profession of law in May, 1963, was not entitled to the status of the right to practice law during the years of 1964, 1965, 1966 and 1967, because of his failure to register as a member of the State Bar and pay the annual license fee as required by the Order of the Georgia Supreme Court which was not promulgated until December 6, 1963. However, the same Court failed to recognize and refused to comment upon their own Order, (Par. 6 and 7, R. 89 & 93) requiring a copy of the order to be sent to each member of the bar together with a registration form and statement of license fee on or before Jan-

uary 1, 1964. The same Court failed to recognize that their own order provided for Due Process of law in requiring all attorneys at law to be notified. This decision of the majority of the Georgia Supreme Court is contrary to Lambert v. People of The State of California, 355 U.S. 225 wherein this Court held that

> "actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply are necessary"

before a penalty can be inflicted for failure to register. This Court further held that:

> "Engrained in our concept of due process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend charges. Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed. Notice is required in a myriad of situations where a penalty or forfeiture might be suffered for mere failure to act."

The record in this case shows that registration was required by the order in order to legalize the continuance of the practice of law, and an assessment was made in the form of a license fee. Furthermore, the Order of the Supreme Court of Georgia penalized the attorney failing to register or failing to pay the assessment by providing suspension. In all of these situations notice is essential to due process, and the record in this case shows without dispute that the petitioner was given no such notice for all of the years he continued to practice law.

CONCLUSION

The petition for writ of certiorari should be granted, and the judgment of the majority of the Supreme Court of Georgia should be reversed for failing to accord petitioner due process of law before enforcing the penalty of suspension upon him.

Respectfully submitted,

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Decided: Feb. 6, 1969

APPENDIX

In the Supreme Court of Georgia

25034. WALLACE V. WALLACE.

1, 2. The appellant not having lawfully practiced law for three years next preceding his election, he was ineligible for the office of district attorney.

3. Since the creation by this court of the State Bar of Georgia was the valid exercise of a judicial function, the constitutional attacks here made are not meritorious.

GRICE, Justice. This review involves an election contest which, among other issues, draws into question the validity of the creation of the State Bar of Georgia. The contest, relating to the office of District Attorney for the Clayton Judicial Circuit, is, insofar as this appeal is concerned, between the appellant Albert Edmund Wallace, Jr., and the appellee Albert Bailey Wallace. It arose following appellant's nomination for that office in the 1968 Democratic Primary and the declaration of his election to the same in the general election of November 5, 1968.

The appellee, a qualified write-in candidate and voter, on November 15, 1968, filed in the Superior Court of Clayton County his petition claiming that the appellant was ineligible to hold the office. He asserted, insofar as necessary to recite here, that the appellant did not meet the constitutional requirement of three years of law practice, since he was not a member in good standing of the State Bar of Georgia because he did not register with or

pay any license fee to the State Bar of Georgia until June 1968, although he had been admitted to practice law in May 1963.

To this petition appellant filed an answer in which he denied the essential allegations and interposed several defenses. Those which are material here may be summarized as follows: (1) that he is eligible to hold the office under both the constitution and laws of Georgia; (2) that he had never been suspended from the practice of law, disbarred or disciplined, and that he had practiced law for more than three years next preceding his election; (3) that Rule 1-501 of the State Bar of Georgia, providing for payment of license fees on January 1 of each year, is not self executing insofar as suspension is concerned, and neither provides for an "automatic" suspension nor that the member "shall stand suspended" for nonpayment of such license fee; and (4) that Georgia Laws 1963, page 70, and Rules of the State Bar of Georgia under which appellee claims appellant to be ineligible, are in violation of the state constitution for several specified reasons which will be recited later.

The contest came on for hearing before a judge of an adjoining circuit without a jury. After hearing evidence, the essential portions of which are hereinafter referred to, he entered an order holding that appellant was ineligible to hold the office and that the constitutional issues were without merit. The order was superseded pending this appeal.

1. We deal first with enumeration number 1, which challenges the holding that appellant was ineligible. This enumeration asserts in substance that the trial court erred in holding that appellant, who was admitted to

practice by a superior court on May 31, 1963, had practiced law continuously in the courts of Georgia since that date, had never been suspended or disbarred, and was elected to the office of solicitor general (now district attorney) on November 5, 1968, was ineligible to hold that office.

Appellant urges that since he has met the requirements recited in the constitutional statute, he is eligible for the office. He contends that the constitution does not define the practice of law, but that the General Assembly considers that admission to the bar and license to practice in the superior courts is all that is required to constitute the practice of law under the constitutional provision, and that membership in the State Bar of Georgia or payment of dues thereto is not any part of the eligibility requirement.

We cannot agree.

Our State Constitution provides in material part that ". . . no person shall be hereafter elected Solicitor General, unless at the time of his election he . . . shall have practiced law for three years next preceding his election." Art. VI, Sec. XIII, Par. I; Code Ann. § 2-4801. An Act of the General Assembly provides: "No person is eligible to the office of solicitor general . . . who has not been duly admitted and licensed to practice law in the superior courts for at least three years . . ." Code § 24-2901, amended by Ga. L. 1964, p. 362.

The statute's denial of eligiblity to one "who has not been duly admitted and licensed to practice law in the superior courts for at least three years" (Code Ann. § 24-2901, supra), must be read in the light of the higher requirement of the Constitution, "shall have practiced

law for three years" (Art. VI, Sec. XIII, Par. I, supra). The language "shall have practiced" means actual practice and, of course, contemplates lawful practice. No one would seriously argue that the Constitution intended to sanction or approve the unlawful practice of law.

Admittedly, appellant was engaged in the practice of law during the three years immediately preceding his election. But the question is whether it was lawful practice.

The undisputed evidence adduced upon the hearing shows that although the appellant was admitted to the practice of law in May 1963 and the State Bar of Georgia was created in December 1963, *he never registered with or paid any license fee to it until June 1968,* "right before" he entered the race for solicitor general.

Rule 1-203 of the rules and regulations for the organization and government of the State Bar of Georgia (219 Ga. 878, 879), approved by this court on December 6, 1963, states that "No person shall practice law in this State unless he is an active member of the State Bar of Georgia in good standing . . ."

The appellant contends that since he has never been suspended for any reason he is a member in good standing of the State Bar. He points to Rule 1-204 (219 Ga. 878, 879-880) which provides that "No person shall be deemed a member in good standing: (a) While suspended for nonpayment of the license fee prescribed . . . (b) While Suspended for disciplinary reasons . . ." and asserts that no affirmative action suspending him having been taken, he was authorized to practice law during the years 1964 - June 1968.

This contention is wholly without merit. What appellant overlooks is that he had never achieved the status of a member of the State Bar in good standing so as to require any suspension, affirmative or otherwise, to deprive him of it. Thus the question of suspension is not even relevant. A person cannot be suspended from a status he does not occupy and has never occupied.

We fully agree with the learned trial judge that "It is crystal clear that no person can legally practice law without first registering and paying the license fee required." Besides Rules 1-203 and 1-204, quoted in part above, it is apparent from paragraph 7 of the Order of this court creating the State Bar (219 Ga. 873, 876) that this result was intended.

The appellant's practice of law during the years 1964, 1965, 1966, 1967, and approximately one-half of 1968 having been unlawful, he does not meet the constitutionality eligibility requirement of having practiced law for three years next preceding his election, and the trial court's holding that he was ineligible for the office of district attorney was correct.

2. Enumeration of error number 2, asserting in essence that the trial court erred in construing Rule 1-204 of the State Bar of Georgia insofar as suspension of the appellant is concerned, is controlled adversely to him by the ruling in division 1, supra, of this opinion.

3. This brings us to the enumeration complaining of the overruling of appellant's attacks on the constitutionality of Georgia Laws 1963, page 70, which authorized this court to create the State Bar of Georgia.

Before going into the issues some prior events should be noted.

The movement seeking the establishment of unified, or integrated as they also are called, state bar organizations began throughout the United States about 1920. From the reported cases and legal periodicals it is apparent that the efforts were fraught with controversy. The arguments for and against have been thorough, and need no reiteration here.

The nature of this type of organization has been well defined: "This means that all practicing attorneys in the state are required to be members of the state bar, that they are subject to the rules of the bar, including provisions for the payment of an annual fee to administer the purposes of the integrated bar, and that they are required to adhere to a code of ethics and are subject to disciplinary proceedings for infractions of the code. Whether created by or pursuant to statutes or by court rules, integrated bars have common characteristics of being organized by or under the direction of the state, and of being under its direct control; and in effect such bars are governmental bodies . . ." 7 Am.Jur.2d 47, Attorneys at Law, § 7.

A number of purposes of such organizations have been stated. With varying emphasis they include such matters as improving the administration of justice, assisting in the admission to the bar, handling disciplinary infractions, continuing legal education for the bar, prohibiting unauthorized practice of law, and improving public relations.

Some 30 states have now created unified or integrated bars. No state which has created one has later abandoned it.

Efforts to bring about a unified bar in Georgia began

in the late 1920's and continued almost without interruption, as the legal publications show.

In 1963 the General Assembly passed an Act (Ga. L. 1963, p. 70) which recites that ". . . the Supreme Court of this State shall be authorized, upon a petition presented by the Georgia Bar Association, to establish, as an administrative arm of the court, a unified self-governing bar association to be known as the 'State Bar of Georgia' composed of all persons now or hereafter licensed to practice law in this State." This Act recited that it gave the supreme court authority, upon recommendation of the Georgia Bar Association, to adopt rules and regulations for the organization of a unified bar and to define the rights, duties and obligations of members, including payment of a reasonable license fee, and to otherwise regulate and govern the practice of law in this state.

On August 31, 1963, an application by the Georgia Bar Association for the establishment of a unified state bar was made. Certain lawyers filed objections, which included several of the attacks made here. On October 21, 1963, a public hearing was held at which lawyers appeared personally in support of and in opposition to its establishment.

On December 6, 1963, this court, without written opinion, entered an order, portions of which are as follows:

"In the Supreme Court of Georgia

"In Re: . . .

"ORDER

"Upon consideration of the application filed in this

Court on behalf of the Georgia Bar Association . . . it is ORDERED:

"1.

"That the proposed rules and regulations for the organization and government of the State Bar of Georgia submitted to this court on August 31, 1963, pursuant to order of this Court, and thereafter amended following hearing on October 21, 1963, and resubmitted to this Court, be and the same are hereby approved.

"2.

"That pursuant to . . . (Ga. Laws 1963, p. 70), the State Bar of Georgia is hereby created and established.

"3.

". . . [other paragraphs]

"So Ordered, this 6th day of December, 1963 . . ."

Then appear the signatures of the seven members who then constituted this court, followed by their titles.

This order is inscribed on the Minutes of the Supreme Court at Volume 34, page 107, and is reported at 219 Ga. 873.

The foregoing order was necessarily a determination that the action then taken was not, for any reason, considered contrary to the laws and constitution of this state or the constitution of the United States, in keeping with the oaths of office taken by those then serving. This order is persuasive here.

The constitutional attacks which appellant makes,

insofar as necessary to recite, may be summarized as follows:

(1) That the legislative Act (Ga. L. 1963, p. 70), authorizing this court to create a unified state bar, is unconstitutional in that it attempts to delegate legislative power to the Supreme Court and the Georgia Bar Association, contrary to Article I, Section I, Paragraph XXIII of the State Constitution;

(2) That said Act is unconstitutional in that it attempts to delegate to the Supreme Court and the Georgia Bar Association jurisdiction to legislate into existence the State Bar of Georgia, in violation of Article VI, Section II, Paragraph IV of the State Constitution;

(3) That said Act is unconstitutional in that it is a special law relating to a subject for which provision has been made by a general law, in violation of Article I, Section IV, Paragraph I of the State Constitution;

(4) That said Act is unconstitutional in that it deprives appellant and others of full enjoyment of their rights, privileges and immunities as lawyers, in violation of Article I, Section I, Paragraph XXV of the State Constitution;

(5) That said Act is unconstitutional in that it deprives appellant of the right to have his rights, duties and obligations defined by the General Assembly, in violation of Article III, Section I, Paragraph I of the State Constitution;

(6) That said Act is unconstitutional in that it deprives appellant of determination by the General Assembly of matters properly the subject of legislation defining his rights, duties, and obligations as a lawyer, in

violation of Article III, Section VII, Paragraph XX of the State Constitution; and

(7) That said Act and the Rules of this court for the organization of the State Bar (219 Ga. 878 et seq) are unconstitutional in that the General Assembly purported to delegate to this court the power to create a private corporation and that this court purported to do so, in violation of Article III, Section VII, Paragraph XVII of the State Constitution.

These constitutional attacks upon the creation of the State Bar of Georgia are similar to many which have been made upon the various unified bar organizations throughout the United States. However, the courts have consistently upheld such organizations.

(a) The substantial question made by these attacks, as we view them, is whether the authority given the Supreme Court to create the State Bar of Georgia was legislative power.

Without doubt, the answer is no.

First of all, the very essence and basis of a unified bar is the regulation of the practice of law, which historically has been a judicial, not a legislative, function. And our State Constitution declares that "The judicial powers of this state shall be vested in a supreme court . . . [and other courts]." Art. VI, Sec. I, Par. I; Code Ann. § 2-3601.

In most, if not all, of the jurisdictions of this country, it is recognized that "The practice of law is so intimately connected with the exercise of judicial power in the administration of justice that the right to define and regulate the practice naturally and logically belongs to

the judicial department of the state government. Indeed, it has been said that the courts have an inherent power to regulate the conduct of attorneys as officers of the court, and to control and supervise the practice of law generally, whether in or out of court. While it is in the prerogative of the judicial department to regulate the practice of law, the legislature, under the police power, may act to protect the public interest, but in so doing, it acts in aid of the judiciary and does not supersede or detract from the power of the courts." 7 Am.Jur.2d 44, Attorneys at Law, § 2.

The question of a court's inherent power to supervise regulation of the practice of law by creating a unified state bar has been discussed at length by a number of the states' highest court and each of them has held that it had such power. Among those decisions are: Commonwealth ex rel. Ward v. Harrington, 266 Ky. 41 (98 SW2d 53); In re Sparks, 267 Ky. 93 (101 SW2d 194); In re Mundy, 202 La. 93 (11 So.2d 398); Integration of Bar Case, 244 Wis. 8 (11 NW2d 604); State Bar of Michigan v. City of Lansing, 361 Mich. 185 (105 NW2d 131); Re Nebraska State Bar Association, 133 Neb. 283 (275 NW 265, 141 ALR 151); In re Integration of State Bar of Okahoma, 185 Okla. 505 (95 P.2d 113); Petition for Integration of Bar of Minnesota, 216 Minn. 195 (12 NW2d 515); Petition of Florida State Bar Association (Fla.), (40 So.2d 902); In re Unification of the Montana Bar Association, 107 Mont. 559 (87 P.2d 172); Application of Montana Bar Association for Unification and Integration of the Bar, 140 Mont. 101 (368 P.2d 158); In the Matter of Integration of the Bar of the State of Hawaii (Ha.) (432 P.2d 887). See also, Lathrop v. Donohoe, 367 US 820, 6 LEd.2d 1191, 81 SCt. 1826;

In the Matter of Disbarment of Paul E. Rhodes, 370 F2d 411 (8th Cir.) (cert. den. 386 US 999).

Various courts, in recognizing this inherent power to create unified state bar organizations, have defined or explained the nature and extent of inherent power as follows:

"The power to regulate the conduct and qualifications of its officers does not depend upon constitutional or statutory grounds. It is a power which is inherent in this court as a court — appropriate, indeed necessary, to the proper administration of justice . . ." In re Sparks, 267 Ky. 93, supra.

"Inherent power arises from the fact of the court's creation or from the fact that it is a court. It is essential to its being and dignity and does not require an express grant to confer it. Under our form of government it is the right that each department of government has to execute the powers falling naturally within its orbit when not expressly placed or limited by the existence of a similar power in one of the other departments." Petition of Florida State Bar Association (Fla.), 40 So.2d 902, supra.

"The term 'inherent power of the judiciary' means that power which is essential to the existence, dignity, and functions of the court from the very fact that it is a court." Re Nebraska State Bar Association, 133 Neb. 283, supra.

Also, this court has long recognized the inherent power of the judiciary. "That the courts possess certain inherent powers is a proposition which, so far as we know, has never been questioned. Chapman v. Gray,

8 Ga. 337; Bradley v. State, 111 Ga. 168 (36 S.E. 630, 50 L.R.A. 691, 78 Am.St.R. 157); Devereux v. Atlanta Railway & Power Co., 111 Ga. 855 (36 S.E. 939); Central of Georgia Ry. Co. v. Alford, 154 Ga. 863 (115 S.E. 771). This means, then, when the constitution declares that the legislative, judicial and executive powers shall forever remain separate and distinct (art. 1, sec. 1, par. 23), it thereby invests those officials charged with the duty of administering justice according to law with all necessary authority to efficiently and completely discharge those duties the performance of which is by the constitution committed to the judiciary, and to maintain the dignity and independence of the courts." Lovett v. Sandersville Railroad Co., 199 Ga. 238, 239 (33 SE2d 905).

The argument is made that this court had no power, inherent or otherwise, to organize the State Bar since it is limited by Article VI, Section II, Paragraph IV of the State Constitution (Code Ann. § 2-3704) to appellate jurisdiction for the correction of errors of law, and the proceeding for organization of the State Bar was an original one.

This argument confuses power and jurisdiction. Jurisdiction refers to the types of cases the court can hear and decide. Power includes the authority to perform any function reasonably necessary to effectuate its jurisdiction, improve the administration of justice, and protect the judiciary as an independent department of the government. See DeKrasner v. Boykin, 54 Ga.App. 29, 34-36 (186 SE 701), for an excellent discussion of this distinction and numerous citations.

Nor does the fact that the legislature has in the past

enacted statutes concerning the practice of law indicate that such is a legislative function. This court's recognition of such legislative enactments as Georgia Laws 1945, page 155 (Code Ann. §§ 81-1601 et seq), creating the Judicial Council, and Code § 9-105 (as amended by Georgia Laws 1952, page 262), relating to appointment of the Board of Bar Examiners, does not mean that this court intended to, or even could, relinquish this judicial responsibility to the legislature. On the contrary, this court has stated that the judiciary cannot be circumscribed or restricted in the performance of its power and duty to regulate the practice of law and has made it plain that it considers such legislation to be "in aid of the judiciary in the performance of its functions." Ga. Bar Assoc. v. Lawyers Title Ins. Co., 222 Ga. 657, 659 (151 SE2d 718) (one Justice specially concurring, one dissenting — but both recognizing the power of the court to regulate the practice of law).

Furthermore, the General Assembly apparently recognized that the creation of a unified state bar was properly a judicial function for the highest court in our judicial department. The Act manifests that body's approval, in the public interest, of the creation of a unified state bar, but leaves the creation, organization and government of it to this court.

Creation of a unified state bar being a judicial function, the legislature was not, in Georgia Laws 1963, page 70, attempting to delegate legislative power to the Supreme Court and the Georgia Bar Association, nor attempting to delegate to the court and the Bar Association jurisdiction to legislate the State Bar into existence.

This holding also controls adversely to appellant as to

his attacks asserting that the Act deprives him and others of full enjoyment of their rights, privileges and immunities as lawyers and deprives him of the right to have his rights, duties and obligations defined by the General Assembly. As discussed above, regulation of the practice of law is the function of the judiciary.

(b) The contention that Georgia Laws 1963, page 70, is a special law on a subject for which provision has been made by a general law is without merit.

The Act clearly is a general law. See Cooper v. Rollins, 152 Ga. 588, 592 (110 SE 726, 20 ALR 1105); Talley v. Sun Finance Co., 223 Ga. 419 (2) (156 SE2d 55).

Furthermore, the portion of Code § 24-3901 relied upon by the appellant, subsection 1, deals with the jurisdiction of this court, not its power, as discussed in division 3 (a), supra.

(c) The last constitutional attack asserts that the Act and the Rules of this court for the organization and government of the State Bar, violate Article III, Section VII, Paragraph XVII of the State Constitution (Code Ann. § 2-1917), in that the General Assembly purported to delegate to this court the power to create a private corporation and this court purported to do so.

This contention is without merit.

The State Bar of Georgia is not a private corporation. No language appears in the Order of this court that indicates any intent to create a private corporation. On the contrary, what was created is an administrative arm of the court. It is a governmental body. 7 Am.Jur.2d 47, Attorneys at Law, § 7, supra.

Since the creation by this court of the State Bar of

Georgia was the valid exercise of a judicial function, the attacks here made are not meritorious.

For the foregoing reasons, the judgment of the trial court is Affirmed. All the Justices concur, except Nichols and Frankum, J.J., who dissent. Duckworth, C.J., not participating, absent due to illness.

NICHOLS, Justice, dissenting. I dissent from divisions 1 & 2 of the majority opinion, as well as the judgment of affirmance.

Assuming, but not deciding that the creation of the State Bar of Georgia can withstand every attack made upon its constitutionality in this case, yet, at the time of the creation of the State Bar of Georgia all attorneys, duly licensed to practice law in this State, continued to be duly licensed until such time as they might have been suspended, disbarred, or otherwise had their licenses revoked.

Rule 1-501 provides: "License Fees — Each member of the State Bar of Georgia shall pay to the State Bar of Georgia a license fee which shall be due on January 1 of each year and upon his failure to do so, such member shall be given notice by mail by January 15 that his license fee has not been received and, if he fails to pay the same by March 1, he shall be suspended until all such license fees for the current and prior years shall have been paid, whereupon he shall automatically be reinstated."

The only logical interpretation of such rule is that some affirmative action must be taken before any suspension can result. Admittedly the appellant was duly licensed to practice law in this State at the time of the

creation of the State Bar of Georgia, and the State Bar of Georgia, through its proper officers, having failed to take any affirmative action to suspend the appellant it cannot be said that the practice of law by him for the three years, next preceding his election as solicitor general (district attorney) was illegal.

I am authorized to say that Frankum, J., concurs in this dissent.

Atlanta, February 6, 1969

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

A. Ed Wallace, Jr., v. Albert Bailey Wallace.

This case came before this court upon an appeal from the Superior Court of Clayton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Nichols and Frankum, JJ., who dissent, and Duckworth, C.J., not participating, absent due to illness.

BILL OF COSTS, $30.00

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 117

A. ED. WALLACE, JR.,

Petitioner,

VS.

ALBERT B. WALLACE,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 117

A. ED. WALLACE, JR.,

Petitioner,

VS.

ALBERT B. WALLACE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Georgia, set forth in the appendix to the petition, pp. 9-25, is reported at 225 Ga. 102 (1969).

JURISDICTION

Petitioner seeks review by certiorari under 28 U.S.C. § 1257(3) on the ground that a right, privilege and immunity

under the United States Constitution has been claimed. More specifically, Petitioner alleges that the "due process" clause of the Fourteenth Amendment in connection with his ineligibility to hold the office of District Attorney because of his failure to meet the requirements of the Georgia Constitution and statute law.

QUESTIONS PRESENTED FOR REVIEW

1. Was the Petitioner in fact notified of the requirements of registration with and payment of a license fee to the State Bar of Georgia?

2. Should certiorari be granted where the only federal question involved was raised for the first time in Motion for Rehearing and was never passed upon by the Supreme Court of Georgia?

3. Is Petitioner's application for certiorari moot because a new election was called and held and the victor assumed the office and is now serving as District Attorney?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are adequately set forth in the petition.

STATEMENT OF THE CASE

In general, the petitioner's statement is accurate. However, an additional statement is necessary in some

respects. Initially, the entire defense of the Petitioner was founded on alleged violations of the Georgia Constitution and not the Constitution of the United States. As admitted in the petition (p. 4), the only federal constitutional question was raised on the Motion for Rehearing filed by petitioner in the Supreme Court of Georgia after the initial decision by that Court. Nowhere in the Supreme Court of Georgia opinion can be found any decision on or discussion of any federal question. Secondly, the petitioner fails to mention that he made inquiry of the State Bar of Georgia to what was necessary to become an active member in good standing in April, 1967, and he was notified of the requirements by letter that same month. (T.8,20).[1] Notwithstanding this notice, he swore on June 4, 1968, that his failure to pay the license fee and register were "unintentional and an oversight and that the deponent was unaware of the requirement that required said dues to be paid, and that deponent was further unaware that said rule required same to be paid was in effect an (sic) existence." (T-19) Thirdly, an order on remittitur was entered by the lower Court on March 6, 1969, making the decision of the Supreme Court the order of the lower Court. Pursuant to this affirmance, the lower Court on March 10, 1969, ordered a special election to be held to fill the office of District Attorney in the Clayton Judicial Circuit. See Appendix. This election was held on May 3, 1969, the victor assumed the office and has exercised the functions of District Attorney ever since. Petitioner was notified of all of the above orders and events, yet did nothing to preserve any rights he may have had.

ARGUMENT

I. WAS THE PETITIONER IN FACT NOTIFIED OF THE REQUIREMENTS OF REGISTRATION WITH AND PAYMENT OF A LICENSE FEE TO THE STATE BAR OF GEORGIA?

The Petitioner apparently contends that he was deprived of "due process" because of his failure to receive any notice of the requirement that he register with and pay a license fee to the State Bar of Georgia beginning in 1964. The Georgia law is that all persons are presumed to know the law, even with regard to criminal statutes. *E.g., Levar v. State*, 103 Ga. 42, *Frazer v. State*, 112 Ga. 13. The Georgia Code (§ 102-105) has always provided that "ignorance of the law excuses no one." An attorney, by definition, gives advice as to what the law is and his profession is to know the law. The Petitioner sought the office of District Attorney, who represents the state and people of Clayton County, Georgia, against the criminal element. How ironic, then that an attorney seeking to represent all of the people of one of Georgia's largest counties should argue that his ignorance of the law concerning his own profession excuses him.

But, pretermitting the question of his knowledge of the law, the record here clearly shows that he was notified of the requirements and sent the proper form in April, 1967. But it was not until June, 1968, that he complied with the necessary legal provisions. (T-8,20) Thus, contrary to his contention, Petitioner was notified of the State Bar of Georgia and its requirements for the lawful practice and cannot be heard now to complain to the contrary. He also shows no reason for his failure that might have required a hearing. The Supreme Court of the United States should not concern itself with what is essentially a minor factual dispute.

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1. The respondent does not have available the paginated certified record in this case. Consequently, Respondent's references to page numbers are to the page numbers of the Transcript of Evidence (e.g., T-8) as prepared for the Supreme Court of Georgia.

II. SHOULD CERTIORARI BE GRANTED WHERE THE ONLY FEDERAL QUESTION INVOLVED WAS RAISED FOR THE FIRST TIME IN MOTION FOR REHEARING AND WAS NEVER PASSED UPON BY THE SUPREME COURT OF GEORGIA?

The federal question allegedly raised here was not presented either in the trial court or in the Supreme Court of Georgia until, by Petitioner's own admission, the motion for rehearing. (Petition, p. 4) It has long been the rule that a question not properly raised, litigated or passed upon below will not be reviewed on certiorari. *McCullough v. Kammerer Corp.*, 323 U.S. 327. The question could certainly have been raised in the Georgia Supreme Court but the Petitioner simply failed to do so; another situation that provides no ground for review. See, *Beck v. Washington*, 369 U.S. 541. Every appellate court, including the Supreme Court of the United States has wisely ruled that it will not pass on question not raised below. *Nelson v. County of Los Angeles*, 362 U.S. 1; *Adler v. Board of Education*, 342 U.S. 485.

The only constitutional questions raised in the trial court concerned the Georgia Constitution. The only constitutional questions raised or passed upon in the Supreme Court of Georgia concerned the Georgia Constitution. The supposed federal question here presents nothing for review.

III. IS PETITIONER'S APPLICATION FOR CERTIORARI MOOT BECAUSE A NEW ELECTION WAS CALLED AND HELD AND THE VICTOR ASSUMED THE OFFICE AND IS NOW SERVING AS DISTRICT ATTORNEY?

Lastly, the question raised by the petition is moot. The affirmance of the Supreme Court of Georgia was made the opinion of the lower Court. That court called a new election,

the election has been held, and the new District Attorney is now representing the people of Clayton County. All of this was done with notice to Petitioner. See Appendix. Yet he sat idly by and let these events transpire, notwithstanding his right to apply for superseadas in the Supreme Court of the United States. Under these circumstances, the election having been held and the person involved admitted to office, Petitioner's alleged deprivation of rights is moot. *Richardson v. McChesney*, 218 U.S. 487.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

/s/ Charles J. Driebe

CHARLES J. DRIEBE
Attorney for Respondent

Box 975
Jonesboro, Georgia 30236

APPENDIX

IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

ALBERT BAILEY WALLACE,	:	CIVIL ACTION FILE NUMBER
PLAINTIFF	:	
VS.	:	
A. ED WALLACE, JR.,	:	
DEFENDANT	:	11,438

ORDER

The Defendant, A. ED WALLACE, JR., (also known as ALBERT E. WALLACE) having been found by this Court to be ineligible for the office of District Attorney for the Clayton Judicial Circuit (formerly the office of Solicitor General) and such finding of ineligibility having been affirmed by the Supreme Court of Georgia and order entered on remittiture from that Court, the General Election of November 5, 1968, is hereby declared invalid only insofar as the office of District Attorney of Clayton Judicial Circuit (formerly Solicitor General) is concerned; and

IT IS HEREBY ORDERED that a special election be held to fill the office of District Attorney of the Clayton Judicial Circuit and that the Ordinary of Clayton County is hereby ordered to call said special election as required by law.

This 10th day of March, 1969.

Order prepared by:
Charles J. Driebe,
Attorney for Plaintiff

Claude Shaw, Judge Fulton Superior Court, Presiding in Clayton Superior Court

cc: Mr. George Finch
Attorney for Defendant
Hon. H.W. Roberts, Ordinary
Clayton County, Georgia

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing upon counsel for the petitioner, Messrs. Wesley R. Asinof, 3424 First National Bank Building, Atlanta, Georgia 30303 and George G. Finch, Fulton National Bank Building, Atlanta, Georgia 30303, by depositing a copy of same in the United States mail, properly addressed and postage prepaid.

This is to further certify that all parties required to be served have been served.

This 31st day of October, 1969.

CHARLES J. DRIEBE